

**STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
300 Capitol Mall, Suite 1700  
Sacramento, California 95814**

**File No. ER03032090  
May 18, 2004**

**SUBJECT:       PROGRAM FOR THE INVESTIGATION AND PROSECUTION  
                  OF AUTOMOBILE INSURANCE FRAUD**

**INITIAL STATEMENT OF REASONS**

The Insurance Commissioner of the State of California (Commissioner) proposes to amend Subchapter 10, Article 4, Sections 2698.70 and 2698.71 of Title 10, Chapter 5 of the California Code of Regulations (CCR) regarding the program for investigation and prosecution of organized automobile insurance fraud. The purpose of the proposed adoption is to implement, interpret and make specific the provisions of the California Insurance Code (CIC) sections 1874.8 and 1871.81 which require the Commissioner to assess and distribute funds for the purpose of investigating and prosecuting organized automobile insurance fraud cases.

**DESCRIPTION OF THE PUBLIC PROBLEM**

The Commissioner proposes to amend Subchapter 9, Article 5, Sections 2698.70 and 2698.71, Title 10, Chapter 5 of the CCR regarding the program for investigation and prosecution of organized automobile fraud. The purpose of the proposed amendment is to implement, interpret and make specific the provisions of the CIC sections 1874.8 and 1874.81 which require the Commissioner to assess and distribute certain funds to California district attorneys for the purpose of prosecuting organized automobile fraud cases.

AB 1050, Chapter 885, Statutes of 1999, was signed by the Governor on October 9, 1999 creating the Organized Crime Prevention and Victim Protection Act of 1999. AB 1050, inter alia, added CIC 1874.8 and 1874.81 as well modifying existing CIC section 1872.8. In adopting AB 1050, the Legislature made the following findings and declaration of purpose:

Section 1. (a) This act shall be known as the Organized Crime Prevention and Victim Prevention Act of 1999.

“(b) The Legislature finds that organized automobile fraud activity operating in the major urban centers of the state represents a significant portion of all

individual fraud-related automobile insurance cases. These cases result in artificially higher insurance premiums for core urban areas and low-income areas of the state than for other areas of the state. Only a focused, coordinated effort by all appropriate agencies and organizations can effectively deal with this problem.”

CIC section 12921 requires the Commissioner to enforce the provisions of the Insurance Code and other laws regulating the business of insurance in the State of California. CIC section 1874.8 requires the Commissioner to establish an annual assessment on each automobile for which a policy of insurance has been issued in order to fund the activity of the Commissioner, the California Highway Patrol and from 3 to 10 county District Attorney’s Offices.

The proposed amendments are necessary to implement, interpret and make specific the provisions of CIC sections 1874.8 and 1874.81 and to conform the text of title 10, CCR sections 2698.70 and 2698.71 with the identical provisions of a related assessment program which were recently amended as part of RH03032089 (title 10, CCR sections 2698.61 and 2698.62). The proposed action would specify the criteria for the calculation and payment of the annual assessment.

#### **STATEMENT OF SPECIFIC PURPOSE**

The specific purpose of each adoption, and the rationale for the determination that each adoption is reasonably necessary to carry out the purpose for which it is proposed, together with a description of the public problem, administrative requirement, or other condition or circumstance that each adoption is intended to address, is as follows:

#### **Section 2698.70 Definitions**

Amendments to this section would define and make clear the terms utilized in the grant program and to conform the terms of these regulations with those promulgated to implement CIC section 1872.8 (Title 10, CCR, sections 2698.61.) These amendments will add a definition for the terms “in force” and “vehicle identification number” and makes appropriate adjustment to the existing definitions for the insertion of the added provisions.

#### **Rational for Necessity**

The term “in force” has been used in the proposed amendment to section 2698.70 subsection (k) of this article to make clear that an assessment is due on a vehicle under this program when coverage is represented by a coverage note or binder. The proposed amendment to section 2698.70 subsection (r) of this article also provide that insurers are to identify the vehicles being counted for the purpose so calculating the assessment by their vehicle specific “vehicle identification number.” The definition of that term in this section provides a specific and uniform definition for the term

#### **Section 2698.71 Annual Fee**

**Specific Purpose:** Except for the amount of the assessment, the existing text of has been deleted and replace with an express cross reference to title 10, CCR, 2698.62, which is concurrently being amended

**Rational for Necessity:** CIC Sections 1874.8 and 1874.81 and existing title 10, CCR, 2698.71, require insurers doing business in this state to pay an annual assessment of one-half-dollar for each vehicle insured under an insurance policy it issues in this state in order to fund the investigation and prosecution of fraudulent automobile insurance claims and economic automobile theft. Sections 1874.8 and 1874.81 do not specify the exact method to be used to establish and collect the assessment.

A similar but distinct automobile insurance fraud assessment program (established under CIC 1872.8 and title 10 CCR 2698.60 et seq.) already existed when AB 1050 was passed by the Legislature in 1999. Because the existing regulations have resulted in unintended interpretations being used by some insurers to calculate and pay assessment, the CDI drafted the a revision of title 10, CCR, section 2698.62 to provide a more uniform assessment calculation and collection methodology.

Because of the related nature of the assessment programs established under CIC 1872.8 and 1874.8, a uniform methodology for calculating and paying the assessment is advantageous for several reasons including efficiency and ease of administration by both insurers and CDI. Providing a uniform methodology for the invoicing and calculation prevents incurring of unnecessary expense otherwise needed to operate disparate assessment procedures.

#### **IDENTIFICATION OF STUDIES**

The Commissioner has not relied on any technical, theoretical, or empirical study or report, or similar document, proposing the adoption of these regulations.

#### **SPECIFIC TECHNOLOGIES OR EQUIPMENT**

Adoption of this regulation as proposed would not mandate the use of specific technologies or equipment.

#### **ALTERNATIVES**

In accordance with Government Code Section 11346.5(a)(12) the Commissioner must determine that no alternative considered by the CDI would be more effective in carrying out the purpose for which the action was taken or would be as effective and less burdensome to affect private persons than the emergency action. These regulations are to implement, interpret and make specific a statutorily prescribed program. The Commissioner has not identified any effective alternative, or any equally effective or less burdensome alternative to the regulation, at this time. The public is invited to submit such alternatives during the public comment process.

**EVIDENCE RELIED UPON TO SUPPORT INITIAL DETERMINATION THAT REGULATION  
WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS (GC  
11346.2(B)(4)**

This requirement does not affect the amount of the assessment due as required by existing statute. This regulation would only establish a more specific methodology for the calculation and collection of the existing assessment.